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HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Appeal No.577/1998

Chaitram

Vs.

State of Madhya Pradesh
(Now State of Chhattisgarh)

Judgment for consideration

Sd/-
V.K. Shrivatava
Judge

Hon'ble Shri Justice Dhirendra Mishra, J.

I agree

Sd/-
DHIRENDRA MISHRA
Judge

JUDGE
05-11-2006

Post for 6-11-2006

Sd/-
JUDGE
6-11-2006

(24)
(21)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Coram : Hon'ble Shri Vijay Kumar Shrivastava &
Hon'ble Shri Dhirendra Mishra, JJ.

Criminal Appeal No. 577 of 1998

APPELLANT — Chaitram S/o Ajab Singh, Village Karpimod, Pandariya, District Bilaspur (CG).

Versus

RESPONDENT — State of Madhya Pradesh (Now Chhattisgarh), Police Station Pandariya, District Bilaspur (CG).

Present :- Shri Manoj Kumar Dubey, counsel for the appellant.

Shri UNS Deo, Additional Public Prosecutor with Shri D.C. Pandey, Panel Lawyer for the State.

J U D G M E N T

(Delivered on 6 November, 2006)

The following judgment of the Court was delivered by **Vijay Kumar Shrivastava, J.**

The Fourth Additional Sessions Judge, Bilaspur holding the appellant guilty for committing murder of his brother Kaliram, punishable under Section 302 of the IPC vide judgment of conviction and order of sentence dated 31.05.1995, delivered in Sessions trial No.332 of 1994, sentenced the appellant to undergo imprisonment for life.

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2) Facts of the case unfolded during the trial are that, on 15.03.1994, Baliram, to bring paddy straw went to his field in the morning hours, leaving the appellant Chaitram and deceased Kaliram, his younger brothers in the house. At around 3 in the afternoon, some quarrel erupted between Kaliram and Chaitram. Chaitram carrying a weapon Sang (one kind of spear), chased Kaliram to attack and assault. But he could not succeed in his attempt, as Kaliram ran away. After some time, when Kaliram was coming back, the appellant saw him and attacked on him with sang. He gave a blow with that weapon sang on his stomach; the weapon pierced his stomach. Kaliram on receiving fatal injury, instantaneously, succumbed to it. The incident was witnessed by Khorbahara.

3) Baliram when came back from his field, saw dead body of Kaliram, called Sarpanch, Kotwar and went to Police Station, Pandariya, where he gave FIR and Merg intimation. KV Dwivedi, Station House Officer, Pandariya, after recording merg intimation and FIR, left for place of occurrence to conduct inquest. He conducted inquest, prepared inquest report and forwarded dead body of Kaliram to Primary Health Centre, Pandariya for autopsy. He also collected blood stained earth and control earth from the spot and weapon of the offence - Sang from Baliram; recorded statements of witnesses under Section 161 of the Cr.P.C. Dr. Anil Kumar Gupta conducted autopsy; on examination of the dead body, he found punctured wound

over epigastric region of abdomen and incised injury over dephrgmatic surface of liver. In his opinion, cause of death was syncope from stoppage of the heart action due to profuse hemorrhage and shock caused by the punctured injury. The injury was ante mortem in nature. The injury was caused by sharp pointed and cutting weapon and the death was homicidal in nature. He prepared his report and sent it to the Police Station. Property recovered was also forwarded to Forensic Science Laboratory for examination. After completion of the investigation, charge sheet was led in the Court of Judicial Magistrate 1st Class, who registered the case bearing Criminal Case No.410/94 and committed the case to the Court of Sessions for trial.

4) Charge under Section 302 of the IPC was framed against the appellant, the same was read over and explained to him who abjured the guilt, and claimed to be innocent. Appellant raised plea of insanity in his defence.

5) Injuries found on the body of Kaliram and his death being homicidal in nature have not been disputed by the appellant. Even otherwise, from the evidence of Dr Anil Kumar Gupta (PW/8) and his autopsy report (Ex.P/12), it has been established that Kaliram sustained following injuries and succumbed to it. His death was caused due to syncope from stoppage of the heart action due to profuse hemorrhage and shock caused by injury.

Punctured injury size 4 cm x 2 cm x 8 cm over epigastric region of abdomen. Margins of the wound are clean cut and regular. Abdominal intestine bulge through injury. Injury is penetrating because injury is passing through skin, fascia, rectus muscle, peritoneum, entering to the abdominal cavity injuring liver. There is incised injury size 2 cm x 1 cm x 1 cm over diaphragmatic surface of liver. Margins of wound of liver are clean cut and regular. Blood clot present over wound. Deep staining of the edges and cellular tissues of wound present which is not removed by washing profuse clotted blood found inside the abdominal cavity. Stomach and intestines are found blood stained.

6) Khorbahara (PW/9) in his statement categorically stated that Chaitram and Kaliram quarrelling with each other came out of the house. Chaitram carrying sang chased Kaliram to assault him. Kaliram ran away; therefore, Chaitram could not succeed in his attempt. After some time, when Kaliram returned, Chaitram came out of his house, gave a pierced blow with iron sang (weapon) in Kaliram's chest and fled away. Kaliram sustained severe injury and instantaneously died. In his cross examination, nothing has been elicited so as to discredit his evidence.

7) Baliram (PW/1), elder brother of the appellant in his statement deposed that in the evening carrying paddy straw from the field, he returned to his house. He saw Kaliram lying in the *badi* having injury over his stomach and blood was oozing from it. Kaliram was dead. Dukhuva and Khorbahara apprised him that Cheram has killed Kaliram. He called Sarpanch and Kotwar. Gowtiraha (PW/2) in his evidence

deposed that in the afternoon, he was threshing gram in his Kothar, at that time, Chaitram after committing murder of Kaliram, was shouting *"Bajrangbali ki jai, isko sar par chadha diya jaye"*; he came out and saw Kaliram lying on the ground having injury in between stomach and chest from where blood was oozing and Kaliram was dead.

8) Johitram (PW/3) in his statement deposed that he saw Kaliram lying in the vegetable field who was dead, having injury in between chest and stomach from where blood was oozing. Villagers were present there. Appellant was absconded. He came to know that Chaitram had killed Kaliram with an iron sang.

9) Tinha (PW/4) and Dhukan Gond (PW/6) in their statement deposed that in the evening when they returned, they came to know that Chaitram has killed his brother Kaliram. They saw dead body of Kaliram lying in the vegetable field.

10) Kehar Singh (PW/5) in his statement deposed that at around 4 pm, he was in his Kothar, where he was threshing gram. He heard some children who were saying loudly that - younger maternal uncle has killed middle maternal uncle. He further deposed that appellant Chaitram is called younger maternal uncle whereas, deceased Kaliram is known as middle maternal uncle. He came out of his Kothar (Grain room), saw Chaitram was coming shouting from vegetable field (badi), Kaliram was putting off the weapon of offence from his chest. Looking to it, he bewildered, sat on the ground. When he relieved

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from confusion, he saw Kaliram was lying in the vegetable field and was dead. In cross examination, when asked by the defence, he stated that Chaitram was running shouting "*mere bhai ko mar diya*".

11) Dhukan Gond (PW/6) in his cross examination stated that when they said that they are going to report the matter, the appellant fled away from his house. From the statement of Sewa Singh (PW/10), it is also evident that appellant after fleeing away from his village, went to his house from where villagers caught the appellant and took him back.

12) In cross-examination of Baliram (PW/1), Gowtiraha (PW/2), Johitram (PW/3), Tinha (PW/4), Kehar Singh (PW/5), Dhukan Gond (PW/6) and Sewa Singh (PW/10), nothing substantial has been elicited so as to disbelieve their version, even otherwise, there is no other material to disbelieve all these witnesses. Ex.P/1 is First Information Report and Ex.P/1-A is merg intimation. Baliram (PW/1) and KV Dwivedi (PW/7) have proved these documents.

13) Evidence of eyewitness Khorbahara (PW/9), although he is a truthful witness, yet has been corroborated with the other creditworthy circumstances proved by witnesses Baliram (PW/1), Gowtiraha (PW/2), Johitram (PW/3), Tinha (PW/4), Kehar Singh (PW/5), Dhukan Gond (PW/6) and Sewa Singh (PW/10), the medical evidence and by the First Information Report. Considering evidence of eye-witness, circumstances, documentary and medical evidence, we

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are of the considered opinion that the appellant by inflicting injury with an iron sang on stomach of Kaliram caused his death.

14) Weapon of crime is an iron sang and it has been seized vide seizure memo (Ex.P/5) which has been proved by KV Dwivedi (PW/7). It is evident that the weapon is made-up of iron, it is 6 ft in length, both the ends are pointed and the edge of front side is 8½ inch having width of 1½ inch, edge of back is 7 inch and the circumference of the weapon is 2 inch. From the above description, it is manifest that it is heavy deadly weapon and if any injury with that weapon is caused, to any person, death of that person is likely to happen, and it has been proved that appellant by piercing such a deadly weapon in the stomach of his brother Kaliram with force, caused his death.

15) The appellant took plea of his insanity. *Therefore, the Court has to ascertain whether at the time of commission of offence, the appellant on account of unsoundness of his mind, was incapable of knowing the nature of act or that he was doing what was either wrong or contrary to law. The crucial point for ascertaining the state of mind is the time when the offence was committed and to ascertain whether appellant was suffering from unsoundness of mind, the Court is required to consider the circumstances which preceded, attended and followed the crime. Burden is discharged if appellant succeeds in placing material before the Court sufficient to make it consider the*

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existence of such circumstances so probable leading to his unsoundness of mind that a prudent man may act upon them.

16) Herein the instant case, appellant in his examination under Section 313 of the Cr.P.C, pleaded his insanity. There is no evidence to establish that appellant was suffering from insanity or unsoundness of mind before, after or at the time of incident. Although Gowtiraha (PW/2) in his cross examination stated that appellant at that time was appearing like mad, but, other witnesses did not support the above version. It is manifest, that appellant and Kaliram were quarrelling. Kaliram ran away, therefore, earlier appellant could not attack him, but soon after his return, appellant attacked and assaulted Kaliram, pierced the deadly weapon iron sang into his stomach and thereafter shouting went to his house. Afterwards, when he came to know that matter is being reported to the police, he absconded from his village and went to another village i.e Khadhoda, where his in-law in relation was living. He was caught from that village and was brought back from there. His conduct itself shows that at the time of incident, he was quite sound and knew well the impact of his act.

17) In the result, the appeal being devoid of merit is liable to be dismissed and is accordingly dismissed.

Sd/-
V.K. Shrivatava
Judge

Sd/-
DHIRENDRA MISHRA
Judge

/11/2006

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